

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

JUANITA LOPEZ,

Plaintiff,

v.

Case No. \_\_\_\_\_

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY and YET-TO-BE-  
IDENTIFIED EMPLOYEES AND/OR AGENTS  
of State Farm Mutual Automobile Insurance Company,

Defendants.

**NOTICE OF REMOVAL**

Defendant State Farm Mutual Automobile Insurance Company (hereinafter “State Farm”), by and through its counsel of record, Miller Stratvert P.A. (Todd A. Schwarz and Jesika M. Ulibarri), hereby gives notice of removal of this matter to the United States District Court for the District of New Mexico as follows:

1. Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendant State Farm hereby gives notice of removal of all counts and claims asserted by the Plaintiff in the civil action filed in the First Judicial District, County of Rio Arriba, State of New Mexico, styled: *Juanita Lopez v. State Farm Mutual Automobile Insurance Company and Yet-to-be-Identified Employees and/or Agents of State Farm Mutual Automobile Insurance Company*; First Judicial District Cause No. D-117-CV-2017-00398 (the “State Court Action”). Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served on State Farm to date are attached hereto as Exhibit 1 (Summons and copy of Acceptance of Service from Office of Superintendent of Insurance) and Exhibit 2 (copy of the below-defined Complaint).

2. Plaintiff's original filing, which is titled as "Complaint for Bad Faith Breach of Contract, Insurance Bad Faith, Intentional Infliction of Emotional Distress, Violations of the New Mexico Unfair Insurance Practices Act and the New Mexico Unfair Trade Practice Act, Negligence and Breach of Fiduciary Duty, Breach of the Implied Covenant of Good Faith and Fair Dealing, Treble Damages, Punitive Damages and Statutory Attorney's Fees and for Declaratory Relief and Reformation of Insurance Contract" (hereinafter the "Complaint"), was filed in the First Judicial District Court on July 7, 2017. The Complaint and Summons were served on Defendant State Farm through the State of New Mexico, Office of Superintendent of Insurance on July 25, 2017. *See* Exhibit 1. Accordingly, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) within thirty (30) days of service of the Complaint and Summons.

3. Defendant State Farm states that this is an action of a civil nature in which the United States District Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between the sole Plaintiff and the sole named Defendant, and the amount in controversy exceeds \$75,000.00.

4. The Complaint asserts that Plaintiff is a resident of Rio Arriba County, New Mexico. *See* Exhibit 2, Complaint ¶ 1.

5. State Farm is a resident of the State of Illinois, as it is incorporated in Illinois and has its principal place of business in the State of Illinois. *See* Defendant's Corporate Disclosure Statement filed concurrently herewith.

6. The amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

7. The following is established on the face of the Complaint. This case involves an actual controversy between Plaintiff, on the one hand, and Defendant, on the other hand,

regarding an alleged motor vehicle collision and alleged resulting personal injuries. Plaintiff alleges that she was covered by underinsured motorist (UIM) insurance policies issued by State Farm and that suffered personal injuries due to a vehicle collision on or about May 1, 2014. *See* Complaint ¶¶ 3-5.

8. Plaintiff alleges that she suffered “bodily injury, pain and suffering, permanent physical and psychological impairment, emotional distress, loss of enjoyment of life and other actual, consequential past and future damages”. *See* Complaint ¶¶ 3-4.

9. Plaintiff alleges that she settled with the tortfeasor’s insurance carrier for the applicable policy limits and that she is now entitled to recover from State Farm alleged UIM coverage with stacked limits of \$125,000.00. *See* Complaint ¶¶ 3-5.

10. Plaintiff further alleges that she is entitled to treble damages, damages for emotional distress, punitive damages, and her attorney’s fees, expenses and costs. *See* Complaint ¶ 9.

11. Without admitting any of the foregoing allegations, Defendant State Farm respectfully submits that the aggregate “value” of what Plaintiff seeks to recover in this case, including Plaintiff’s claim for punitive damages, exceeds \$75,000.00. *See Wiatt v. State Farm Ins. Co.*, 560 F. Supp. 2d 1068, 1075 (D.N.M. 2007) (providing court may “aggregate actual damages, punitive damages, attorneys’ fees, and statutorily imposed penalties” when determining whether jurisdictional amount requirement is satisfied).

12. The United States Supreme Court has recently clarified that “as specified in § 1446(a), a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold. Evidence establishing the amount is required

by § 1446(c)(2)(B) only when the plaintiff contests, or the court questions, the defendant's allegation." *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014).

13. Notice is being provided to Plaintiff of the filing of this Notice as required by 28 U.S.C. § 1446(d).

14. A copy of this Notice will be filed with the Clerk for the District Court for Santa Fe County in the State Court Action as required under 28 U.S.C. § 1446(d).

15. Plaintiff demanded a jury of six in the State Court Complaint. State Farm demands a jury of twelve.

Respectfully submitted,

MILLER STRATVERT P.A.

By /s/ Todd A. Schwarz

Todd A. Schwarz  
Jesika M. Ulibarri  
Attorneys for Defendant  
Post Office Box 25687  
Albuquerque, NM 87125  
Phone: (505) 842-1950  
Fax: (505) 243-4408

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 17th day of August, 2017, a copy of the foregoing was electronically filed through the CM/ECF system, which caused the following participating CM/ECF counsel to be served with same by electronic means and via U.S. Mail to:

Merit Bennett  
The Bennett Law Group LLC  
460 Saint Michael's Drive, Suite 703  
Santa Fe, NM 87505

/s/ Todd A. Schwarz

Todd A. Schwarz